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Draft decision on approval of EAEU Rules of Origin

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Report Highlights:

The Eurasian Economic Commission (EEC), the regulatory body of the Armenia-Belarus-Kazakhstan-Kyrgyzstan-Russia Eurasian Economic Union (EAEU), published the draft Decision “On approval of rules for definition of origin of goods imported into the customs territory of the Eurasian Economic Union (non-preferential rules of definition of Origin of Goods)” for public comments. The comment period for this draft will close on November 23, 2016. As of the date of publication of this report, FAS/Moscow does not believe this measure has been notified to the World Trade Organization.

Interested parties are encouraged to send their comments and concerns directly to EEC at burkov@eecommission.org or agmoscow@usda.gov and Justin.Schwegel@fas.usda.gov.

General Information

On October 24, 2016, The Eurasian Economic Commission (EEC), the regulatory body of the Armenia-Belarus-Kazakhstan-Kyrgyzstan-Russia Eurasian Economic Union (EAEU), published the following draft Decision, [“On approval of rules for definition of origin of goods imported into the customs territory of the Eurasian Economic Union \(non-preferential rules of definition of Origin of Goods\)”](#) for public comments on [its website](#).

An unofficial English translation of the above-referenced draft document can be found below.

This draft is intended to replace the [“Agreement on common rules of origin”](#) of January 25, 2008, between Belarus, Kazakhstan and Russia.

The EEC’s comment period for the draft Decision, “On approval of rules for definition of origin of goods imported into the customs territory of the Eurasian Economic Union (non-preferential rules of definition of Origin of Goods)”, ends on November 23, 2016. The commentary contact is listed on the notification web page as Sergey Burkov, Advisor to the Department of rules of origin, customs cooperation and the conditions of the Preferential Trade Trade Policy Department. The web page also offers a [questionnaire](#) for public comments.

Interested U.S. parties are encouraged send their comments and concerns directly to EEC at burkov@ecommission.org or agmoscow@usda.gov and Justin.Schwegel@fas.usda.gov.

As of the date of publication of this report, FAS/Moscow does not believe this measure has been notified to the World Trade Organization.

BEGIN UNOFFICIAL TRANSLATION:

Council of Eurasian Economic Commission
Decision from _____ 2016 number____

RULES

for definition of the origin of goods imported into the customs
territory of the Eurasian Economic Union
(non-preferential rules of definition of
Origin of Goods)

I. General Provisions

1. These Rules apply for the purposes referred by Paragraph 2 of Article 37 of the Treaty on the Eurasian Economic Union of May 29, 2014.

2. For the purposes of these Rules, the terms are used with the following definitions:

"Harmonized System" - the current version of the Harmonized Commodity Description and Coding System, defined by the International Convention on the Harmonized Description and Coding System of the goods of 14 June 1983;

"Material" - any substance , ingredient, raw material, part of the goods or goods used or consumed in the manufacture of other goods or physically incorporated into another product;

"Non-originating materials" - materials that are not recognized as originating from the country in accordance with paragraph 3 of this Rules, and (or) materials of unknown origin;

"Non-originating goods" - goods that are not recognized originating from the country in accordance with paragraph 3 of this Rules, and (or) goods of unknown origin;

"Obtaining or production" - cultivation, production, breeding, fishing, hunting, extraction, and the performance of all types of production or manufacturing process operations including refining, processing or assembly;

"Originating materials" - materials that are recognized originating from the country in accordance with paragraph 3 of this Regulation;

"Originating goods" - goods that are recognized originating from the country in accordance with paragraph 3 of these Rules;

"Origin of goods" - goods belonging to the country, where the goods were wholly obtained or produced, or subject to sufficient processing in accordance with the criteria set by these Rules. For the purposes of these Rules, country is applicable to a group of countries or customs union of countries or a region or a part of the country, if there is a need to differentiate them for the purposes of determining the origin of goods;

"Cost of goods on 'ex-works' basis" - the price of goods, payable to the producer at which plant was performed the last working or processing of goods, determined on "ex-works" basis in accordance with International rules of trade terms "Incoterms 2010", while in the value of the goods at "ex-works" basis do not include the amounts of reimbursable taxes on the export this product;

"Goods" – obtained or manufactured product, even though if it designed for further manufacturing operations.

Other terms used in these Rules shall be understood to the definitions given in the Customs Code of the Customs Union (Customs Code of the Eurasian Economic Union).

II. Criteria for the origin of goods

3. Goods are recognized originating from country if these goods are:

- 1) Wholly obtained or produced in the country in accordance with paragraph 4 of this Regulation;
- 2) Have undergone sufficient processing in the country in accordance with the criteria established by paragraphs 5 - 8 of this Regulation.

4. The following products are recognized wholly obtained or produced in the country in:

- 1) Minerals, mineral products and other natural resources extracted from the country's subsoil on its territory, in its territorial sea (another water reservoir of the country) or from its seabed or from the air on the territory of the country;
- 2) Plant products grown and (or) harvested in the country;
- 3) Live animals born and raised (grown) in the country;
- 4) Products obtained from live animals in the country;
- 5) Products obtained from hunting and fishing in the country;
- 6) Products of sea fishing and other sea products harvested by the vessel registered and flying the flag of the country;
- 7) Products obtained on a ship processing vessel registered in the country and flying the country's flag, exclusively from the products, referred to in subparagraph 6 of this paragraph;
- 8) Products obtained from the seabed or subsea bed outside of the territorial sea (waters) of the country, provided that the country has exclusive exploitation rights over resources of the seabed or subsea bed;
- 9) Waste and scrap (secondary raw materials) obtained as a result of manufacturing or other processing operations or consumption in the country and being suitable for recycling and (or) for the processing into raw materials;
- 10) Collected in the country used items, which can no longer fulfill its original function and only suitable for recycling and (or) for the processing into raw materials;
- 11) High-tech goods obtained in the open space on space vehicles registered in the country (including leased by it);
- 12) Goods produced in the country exclusively from the products, specified in subparagraph 1-11 of this paragraph.

5. In the event of the production of goods in the country from non-originating materials, the goods are considered originating in the country, if as a result of processing operations or production any of the first four digits of the HS code of the goods becomes different from the code of the non-originated materials used in the manufacture of the goods.

6. If necessary to determine the origin of goods based on the criteria of sufficient processing other than criteria referred to in paragraph 5 of these Rules (hereinafter - special criteria), such specific criteria shall be established by the Council of Eurasian Economic Commission.

The goods in respect of which specific criteria are set, considered as originating from the country if they satisfy such criteria.

7. Specific criteria shall be determined as:

1) Processing or production operations, as a result of which the HS code of the product differs (to a certain level from the HS code of non-originating materials used in the manufacture of the goods

2) Fulfilment of specific conditions, manufacturing or technological operations which are sufficient for country, where such operations took place, to be considered as a country of origin;

3) Changes in the value of the goods so, that the percentage of the cost of the used non-originating materials or the added value reaches the fixed share of the cost of goods (ad valorem percentage rule).

8. Specific criteria specified in paragraph 7 of this Regulation can be established either separately or in combination with each other.

9. Notwithstanding the provisions set out in paragraphs 5 - 8 of these Rules, the following operations both individually and in combination with each other do not meet the criteria of substantial transformation of goods:

1) Operations to ensure the goods safety during storage and (or) transportation;

- 2) Operations for preparation of the goods for sale and (or) transportation (party splitting, shipping, sorting, repackaging);
- 3) Application and (or) print trademarks, logos, labels and other similar distinctive signs for the goods and (or) its packaging;
- 4) Washing, cleaning, removal of dust, oxide coating, oil and (or) other substances coating;
- 5) Painting operations and (or) polishing;
- 6) Freezing and (or) the defrost;
- 7) Peeling, partial or total bleaching, grinding and polishing of cereals and rice;
- 8) Sugar staining operation and (or) the formation lump of sugar;
- 9) Ironing and (or) pressing of textile materials and products;
- 10) Peeling, removing of seeds and (or) cutting fruits, vegetables or nuts;
- 11) Sharpening, simple grinding or cutting goods;
- 12) Sieving through a sieve or a sieve, sorting, classification, selection, assortment (including preparation products kits);
- 13) Bottling, packaging in cans, bottles, bags, boxes, cartons and other packaging operations;
- 14) Simple assembly operations or dismantling of goods in installments;
- 15) Mixing materials (components) which does not lead to differ materially received the goods from raw materials (components);
- 16) Product separation into components which do not lead to differ materially from the derived components of the original product;
- 17) Slaughter of animals, cutting (sorting) meat;

18) Use (operation) of the goods as intended.

10. For the purposes of paragraph 9 of this Rules term simple operation refers to an operation which does not require use of special abilities (skills), machinery, appliances or equipment, specially designed for this operation.

11. The percentage of the cost of non-originating materials used for performing processing operations, calculated by the following formula:

$$X = A / B \times 100\%$$

Where:

X - Percentage of the cost of non-originating materials used for performing operations on processing of goods;

A – Cost of non-originating materials;

B - Value of the goods on an "ex-works" basis.

12. Cost of non-originating materials stipulated by paragraph 11 of this Rules, defined as their customs value for importation into the country - the manufacturer of the exported goods, and if the customs value is unknown or can't be established - in the amount of documented price as of the first sale in the country territory - the manufacturer of the goods.

13. The value of the goods is determined on "ex-works" basis. If the value of the goods can't be determined basis "ex-works", the cost of such a product is defined as the sum of the values of all the materials used in the manufacture of goods, as well as all costs associated with its production, besides the value of goods does not include amounts of reimbursable taxes upon export this product.

14. The goods in the production of which is not fulfilled criteria of sufficient processing of goods, resulted in the implementation of processing operations or production, as a result of which the goods classification code in accordance with the Harmonized system differs at a certain level of classification code from non-originating materials used in the manufacture of such a product in accordance with Harmonized System, should nevertheless be considered as originating goods if the

value of non-originating materials for which such criteria of sufficient processing is not fulfilled does not exceed 10 per cent of the value of the goods on "Ex-works" basis and such materials are necessary component in the production of the goods.

III. Specifics of determining the origin of goods.

15. In determining the origin of the goods, the origin of the following indirect materials, which can be used in production and are not included in the product itself, is not considered:

- 1) Fuel and electrical energy;
- 2) Tools, dies and forms;
- 3) Spare parts and materials used in technical maintenance of equipment and buildings;
- 4) Lubricants, additives and other materials used in the manufacture process or in the equipment operation;
- 5) Gloves, glasses, footwear, clothing, safety equipment;
- 6) Equipment, devices used for testing or inspection of goods;
- 7) Catalysts and solvents;
- 8) Any other materials that are not included in the goods itself, but the use of which in the production of goods may be presented as part of the manufacturing process.

16. Attachments, accessories, spare parts, tools and information materials intended for use with machines, equipment, devices or vehicles are considered as originating from the same country as the machinery, equipment, devices or vehicles if such attachments, accessories, spare parts, tools and information materials are imported and used together with these machines, equipment, devices or vehicles in combination and in a quantity which normally supplied with these devices in accordance with the technical documents.

17. The package in which the goods imported is considered as originating from the same country as the goods, except in cases where packaging in accordance with the basic rules of interpretation by Harmonized System to be declared separately from the product. In this case, the origin of packaging shall be determined separately from the origin of the goods.

18. Goods that are classified as sets, in accordance with the basic rules of interpretation of the Harmonized System (hereinafter - the set), are considered as

originating goods, if all the elements that make up the set are originating materials. The set is also recognized as the originating goods if the set consists of elements, which are non-originating materials, providing that the total amount of such elements does not exceed 15 percent of the set's "ex-works" value.

19. In determining the origin of goods in disassembled or unassembled form (delivered in several batches, if, according to production or transporting conditions, it can't be shipped by one lot) can be considered at the request of the declarant as a single product if all the parts are delivered by one exporter from the same country to the address of one importer within one contract.

IV. Proof of goods origin

20. Origin of the goods should be confirmed by one of the following documents of origin:

- 1) Declaration of origin;
- 2) Certificate of origin.

21. Certificate of origin of the goods should be issued in compliance with the requirements in the Annex for the Rules.

22. The cases and the procedure for confirming the origin of imported goods are defined by the Customs Code of the Customs Union (Customs Code of the Eurasian Economic Union).

23. The origin of goods imported into the customs territory of Eurasian Economic Union is confirmed by Declaration of origin of the goods or, at will of the declarant, by the certificate of origin, except in the case, specified in paragraph 25 of this Rules.

24. In case of revealing the signs that the information in the declaration of country origin is unreliable, the customs authority of the member state of the Eurasian Economic Union (hereinafter - Member State) has right to require (with justification) the certificate of origin for the product.

25. In case of the measures for protection of the domestic market are applied due to the origin of goods under the Treaty on the Eurasian Economic Union of May 29,

2014, the origin of similar goods imported into the customs territory of the Eurasian Economic Union should be confirmed by the certificate of origin (excepting the case of compliance with applicable internal market protection measures).

At the same time, goods with the same HS codes and with the same name as the goods subject to the internal market protection measures but having different origin are considered as the similar goods.

26. The certificate of origin may not be submitted along with the customs declaration of the goods if there is an agreement between the customs authority of Member State and the authorized body (organization) of the third party, which has rights to issue Certificates of Origin (hereinafter - authorized body), about use of the electronic system for verification of origin, which allows to verify issuance of a certificate of origin and authenticity stated therein. In this case the details of the certificate of origin should be indicated in the customs declaration of the goods.

In case of detection of signs that the declared information about the country of origin of the goods is unreliable, or data about the issued certificate of origin of goods are missing in electronic verification system, the original paper Certificate of origin shall be submitted in reply to reasoned request from the customs authority of a Member State.

27. Requirements to electronic system of verification of origin are established by separate protocol (Memorandum) between the customs authority of the Member State and the authorized body. Authorized body must provide:

- 1) Completeness, relevance and reliability of information contained in the electronic verification system for issued certificates of origin of goods;
- 2) Protection of data in the electronic verification system from unauthorized access, destruction, modification, or other illegal actions;
- 3) Proper round o'clock functioning of electronic verification system;
- 4) Storage of data on issued certificates of origin electronic verification system for at least 3 years from the date of their issue.

28. If the customs authority of the Member State finds signs indicating that the certificate submitted to origin was not issued or contains inaccurate information, the customs authority is entitled to send to the authorized body, who issued the certificate,

a reasoned request for confirmation of the authenticity of the certificate, and (or) on the reliability of information contained therein, and (or) for additional or clarifying information (including on the performance of the criteria of origin), and (or) copies of the documents on the base of which the certificate was issued (hereinafter - verification request).

A copy of verified certificate of origin has to be attached to verification request.

Reasons for the delivery of verification request and other additional information, indicating what information in the certificate of origin may be unreliable, have to be indicated in the request, excepting for the cases of selective verification.

29. In the case of non-receipt of response by the customs authority of the Member State to the delivered verification request after 4 months from the date when certificate was sent, the document in question shall not be regarded as document confirming the origin of the goods.

30. To be considered as a proof of the certificate of origin of the goods, the received results of verification must clearly indicate that the certificate of origin is genuine, and (or) the information referred to therein is accurate.

31. In order to verify that the issuance of certificate of origin of products and reliability of the information contained herein it is allowed that the customs authorities of Member States' refer to the electronic database created by authorized authorities and placed on appropriate official website in the "Internet" (the information-telecommunication network - electronic database).

Verification of the certificate of origin via an electronic database should be considered as an alternative during making decision on sending of the Request for verification. At the same time, the possibility to verify the certificate of origin by using an electronic database does not limit the right of the customs authority to deliver the Request for verification.

32. In case of receiving by the Eurasian Economic Commission (Hereinafter - the Commission) the information about third-party electronic databases, the Commission provides such information to customs authorities of the Member States, including Addresses of the official "Internet" websites, which places such electronic database, and also conditions of access of customs authorities of Member States to such electronic databases (if such information is available).

In case the Commission receives such information from the customs authority of one of the Member States, the Commission sends it to the customs authorities of other Member States.

Information about third parties electronic databases is placed by the Commission on the Union's official website.

33. The certificate of origin is not considered as a proof of the origin of goods in the following cases:

- 1) Failure to receive response to the Verification request (including copies of the documents requested in accordance with paragraph 28 of this Regulation) within the prescribed period;
- 2) Inability to establish the authenticity of the certificate of origin of goods and (or) on the origin of goods on the base of the obtained results of the verification;
- 3) Inconsistency of the submitted certificate of origin of the product with the requirements stipulated in the Rules Attachment.

ANNEX

To the Rules for origin of goods imported into the
Customs territory of Eurasian Economic Union
(Non-preferential rules for determining the origin of goods)

REQUIREMENTS

To the Certificate of Origin

1. Certificate of Origin (hereinafter - the certificate) is printed on A4 format safety paper with security features that deter mechanical or chemical counterfeiting.

2. Certificate is printed in English, French or Russian.

3. The Certificate of Origin must not contain any erasures, corrections and (or) uncertified alterations and (or) additions. Alterations and (or) additions shall be entered in the certificate by crossing out the erroneous entries and printing or writing correct information, which are certified by the signature and official seal of the authority.

4. The certificate must contain the following information:

- 1) Name of the country of origin of goods;
- 2) The certificate number, name of the authorized body, issuing the certificate;
- 3) Name and address of exporter, consignor, the manufacturer or supplier;
- 4) Name and address of the consignee or the destination country;
- 5) Sufficient description for identification of the goods,
- 6) Gross weight and (or) other quantitative characteristics of the goods;
- 7) Details of the document confirming the country of origin of the goods and issued in the country of origin (in case certificate origin of goods issued by the country of exportation of the goods);
- 8) Information about identity of certificate (stamp of the authorized organization issuing the certificate, signature of an official from the authorized organization, date of issue of the certificate).

5. Information referred to in paragraph 4 of this Rules represent the minimum set of information to be reflected in the certificate. Additional information required information can be specified.

6. The certificates without security features that deter mechanical or chemical counterfeiting are allowed, and the requirements of the subparagraph 8 of paragraph 4 of the Rules concerning the stamp of the issuing authority and signature of its official are not obligatory if an institution (organization) authorized by a third-party to issue certificates uses an electronic database, referred to in the paragraph 31 of the Rules for definition of the origin of goods, imported into the customs territory of the Eurasian

Economic Union (non-preferential rules of origin goods), approved by the decision of the Board of the Eurasian Economic Commission on _____ 2016 number____.

7. In case the origin of goods is confirmed by a Preferential Certificate of origin, the graph for official notes of this certificate must contain mark "for non-preferential purposes», «for non-preferential purposes » or «à des fins non préférentielles».

END OF UNOFFICIAL TRANSLATION